

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 02-14-65475

HUD# 07-14-0293-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

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COMPLAINANT

ANGELA WILLIAMS

Commissioner, Iowa Civil Rights Commission

400 East 14th Street

Des Moines, Iowa 50319

and

IOWA CIVIL RIGHTS COMMISSION

400 East 14th Street

Des Moines, Iowa 50319

Complainant's Allegations:

Complainant is a member of the Iowa Civil Rights Commission (ICRC). Complainant alleged Respondents designed and constructed covered multifamily dwelling units in violation of the design and construction accessibility requirements of the Iowa Civil Rights Act (ICRA) and the federal Fair Housing Act (FHA). Complainant alleged Respondents violated the "accessible route into and throughout the unit," "light switches, thermostats, electrical outlets in accessible locations," and "usable kitchens and bathrooms" requirements (referenced respectively as Requirements 4, 5, and 7) in the ICRA and FHA. In Unit 209, Complainant specifically alleged (1) the clear opening width at the sliding glass-door to the balcony was measured at 31.38 inches, which is less than the minimum of 31.63 inches; (2) the exterior height of the threshold level was measured at 2 inches, which is greater than the maximum allowable threshold height of 0.75 inches; and (3) the height of the thermostat control was measured at a height greater than the maximum reachable height of 48 inches.

Description of the Subject Property

The subject property, Woodland Reserve North, located in Ankeny, Iowa, is comprised of three apartment buildings, as well as the associated public and common use areas. Certificates of Occupancy were issued for Buildings 103, 107, and 201 in 2013. Two of the buildings have three floors and one elevator – Building 103 has 15 units per floor totaling 45 units and Building 201 has 12 units per floor totaling 36 units. Building 107 does not have an elevator but has 14 ground-floor units.

While only the ground floor units are “covered” in Building 107, Buildings 103 and 201 have elevators, so every dwelling unit in those buildings are covered by the design and construction provisions of the ICRA and FHA.

This agreement is limited to (1) all units in Buildings 103 and 201; (2) the ground-floor units in Building 107; and (3) the surrounding public and common use areas. Please see the table at the top of next page, which lists the different types of units and the total number of covered units per building and per type.

UNIT TYPE	BUILDING #	TOTAL COVERED UNITS PER BUILDING	TOTAL COVERED UNITS PER TYPE
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“1B” – One bedroom / one bathroom – 718 square feet	103	2	4
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107	2		
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201	0		
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“1C” – One bedroom / one bathroom – 853 square feet	103	2	2
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107	0		
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201	0		
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“1A” – One bedroom / one bathroom – 787 square feet	103	20	31
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107	11		
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201	0		
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“1A1” – One bedroom / one bathroom – 787 square feet	103	0	1
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107	1		
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201	0			
"2A" – Two bedrooms / two bathrooms – 1,187 square feet				
103	21	46		
107	0			
201	25			
"3A" – Three bedrooms / two bathrooms – 1,325 square feet				
103	0	1		
107	0			
201	1			
"3B" – Three bedrooms / two bathrooms – 1,402 square feet				
103	0	10		
107	0			
201	10			

TOTAL COVERED UNITS FOR ALL THREE BUILDINGS

95

Respondent's Defenses:

When asked in the questionnaire what was true or false about the allegations, Respondents answered:

1. We have/will alter the patio door to the required width.
2. We have/will lower the thermostat to <48."
3. We will ramp the door to accommodate.

Report of Preliminary Findings:

ICRC Investigators inspected seven units. The building number, unit number, and unit type are listed in the table below in the order they were inspected.

BUILDING #	UNIT #	UNIT TYPE
103	110	1B
103	208	1C
103	301	2A
107	102	1A
107	113	1A1
201	206	3A
201	108	3B

After conducting an onsite inspection of the units listed in the table above and the public/common use areas surrounding the three buildings, ICRC Investigators found and reported the following deficiencies:

1) Ten slope measurements were taken at Woodland Reserve North – eight at ramps and two at sidewalks. The running-slope measurements reported in the table below were all greater than 5%, and the cross-slope measurements were all greater than 2%, which are the maximum slopes allowed by Section 4.3.7 of the ADAAG [Requirement 2]. The table at the top of next page lists the slope types, the slope measurements, and the location of the measurements.

TYPE	LOCATION	SLOPE
CS	Sidewalk adjacent to southwest of Bldg. 103	2.5%
CS	Sidewalk adjacent to west of west curb ramp for Bldg. 103	2.7%
RS	Sidewalk landing for west curb ramp to Bldg. 103	6.8%
RS	Sidewalk landing for east curb ramp to Bldg. 103	6.4%
CS	Flare adjacent to the east of west curb ramp to Bldg. 201	5.9%
RS	Sidewalk landing for east curb ramp to Bldg. 201	6.2%

CS	Flare adjacent to the east of east curb ramp to Bldg. 201	5.6%
CS	Sidewalk section adjacent to southeast corner of Bldg. 201	4.5%
CS	Southeast curb ramp near garages adjacent to the south of Bldg. 201	2.9%
RS	Southeast curb ramp near unattached garage building adjacent to south of Bldg. 201	10.5%

2) No detectable warnings were observed in any of the flared sides to curb ramps, or at the two curb ramps located adjacent to southeast of Building 201. Detectable warnings are required by Sections 4.7.7 and 4.29 of ADAAG for the safety of visually-impaired persons [Requirement 2].

3) Each of the parking areas for Buildings 201 and 103 include four spaces designated as reserved for persons with disabilities, and the one for Building 107 has three. Although at least one parking space and access aisle per building was observed which meets the required dimensions for “Van-Accessible” parking spaces found in Section 4.1.2 of the ADAAG, none of these parking spaces had the required signage designating them as “Van-Accessible” [Requirement 2].

4) The height for the keyholes in the top row of mailboxes at each of the mailbox kiosks for all three buildings was measured at 57.5 inches. All of the mailboxes for Buildings 103 and 201 must be reachable, while only those for the ground-floor units in Building 107 need to be reachable. There is enough clear floor space in front of the mailboxes for tenants using a wheelchair to make a parallel approach, which allows for a maximum reach height requirement of 54 inches. Therefore, the mailboxes with a height greater than 54 inches are unusable, according to the maximum reach parameters of Section 4.2.6 of ANSI 1986 [Requirement 2].

5) The doors located at the building entrances are exterior-hinged doors. According to ANSI, the exterior doors should require no more than 8.5 pounds to open. Measurements were taken at the doors for each of the three apartment buildings. The following table lists the measurements which exceeded the ANSI requirements:

BUILDING #	DOOR	OPENING FORCE
103	West	15 pounds
103	South	10 pounds

103	East	15 pounds
201	West	20 pounds
201	South	9 pounds
201	East	20 pounds

The information collected indicates the entrance doors to the apartment buildings require too much force to open them, which makes them inaccessible [Requirement 2].

6) The “general circulation path” along the ground-floor interior hallway from the adjacent units to the following areas includes a seven-inch vertical rise:

- Building 103 – near the garages on the east side of the building.
- Building 201 – near the garages on both the east and west side of the building. The building dumpster is also located on the east side of the building, next to the garages.

In the current scenario, a tenant using a wheelchair for mobility must enter or exit these buildings through the south-facing doors, which will result in a significantly longer travel path for tenants to access the dumpster or the garage spaces, in violation of the requirements for an accessible route as established in Section 2.15 of the Fair Housing Act Design Manual (FHADM) and in Section 4.3, 4.5, and 4.8 of ANSI 1986 [Requirement 2].

7) Each unit has two sliding glass doors onto the porch or balcony – one from the living room and the other from one of the bedrooms. The clear opening width for the sliding glass door at the living room for all inspected units measured 25.5 inches. While the clear opening width for the sliding glass located in the bedroom was measured at 31.63 inches, which complies with the requirement above quoted, the door from the living room in each inspected unit was too narrow, which made that door unusable by persons utilizing a wheelchair. In accordance with Section 3.3 and 3.10 of the FHADM, if a balcony or porch has two entrances, both entrances must be usable [Requirement 3].

8) The Guidelines have requirements for the interior and exterior threshold heights at secondary doors. The FHADM states:

Since an accessible route must be provided throughout the unit, thresholds at secondary exterior doors also are limited to a maximum height of $\frac{3}{4}$ inch. However, secondary doors that exit onto exterior decks, patios, or balcony surfaces are allowed to have a 4-inch maximum step (or more if required by local building code) to prevent water infiltration at door sills only if the exterior surface is constructed of an impervious material such as concrete, brick, or flagstone. If the exterior surface is a pervious material such as a wood deck that will drain adequately, the decking must be maintained to within $\frac{1}{2}$ inch of the interior floor level.

As indicated in the above quote, the maximum value for the exterior threshold is 0.5 inch below the interior floor level. So, to determine whether the exterior threshold is in compliance with this requirement, we must subtract the measured exterior threshold height from the interior threshold height.

At Unit 301 in Building 103, the interior threshold onto the interior carpeted floor in the living room was measured at 1.63 inches, and the exterior threshold height onto the wood balcony was measured at 2.31 inches, which results in the exterior threshold being 0.68 inches below the finished interior floor surface adjacent on the other side of the threshold. Meanwhile, the interior threshold height onto the finished wood floor in the living room at Unit 110 in Building 103 was measured at 1.5 inches at the entrance from the living room. The interior and exterior threshold heights in these units are too high and render the secondary entrance and the porch itself unusable by a tenant using a wheelchair [Requirement 3].

9) Other than the electrical outlets in the kitchen, bathroom, and laundry room, the height for all electrical outlets located within the units was measured at 13.5 to 14 inches. The height measured renders these electrical outlets unusable by tenants who utilize a wheelchair, because they are at a height that is less than the 15-inch minimum allowed by Section 4.2.5 of ANSI 1986 and Section 5.8 of the FHADM [Requirement 5].

10) Unit 110 in Building 103 has a U-shaped kitchen with the sink located in a corner configuration. The length of the straight counter edge in front of the sink was measured at 24 inches. A tenant utilizing a wheelchair will require either 30 inches for a forward approach or 48 inches for a parallel approach. Whether making a forward or parallel approach to the kitchen sink, this kitchen is unusable because the kitchen sink is not wide enough to allow a tenant in a wheelchair to make a centered approach [Requirement 7].

11) In Building 103, the swing of the door to the bathroom for Units 110 and 208 did not clear the 30-inch by 48-inch burlap cloth, which was placed on the bathroom floor flush against the bathtub, and between the adjoining wall and the toilet. Therefore, the clear floor space is less than the 30 by 48 inches of clear floor space required by Section 7.39 of the FHADM [Requirement 7].

12) The distance from the midline of the sink to the adjacent wall in the bathroom for Units 110 and 208 in Building 103, and Units 102 and 113 in Building 107 was measured at no greater than 18.75 inches, which is under the minimum of 24 inches required, due to no removable cabinets, as established in Section 4.32.4.3 of ANSI 1986 and Section 7.47 of the FHADM for bathrooms without removable cabinets [Requirement 7].

13) The height of the towel bars in the bathrooms of all inspected units was measured at no less than 55 inches, including those which were located directly above the toilet. The maximum allowed height for a tenant reaching over an obstruction is 46 inches, or 48 inches without the obstruction, as outlined in Section 4.2 of ANSI 1986 [Requirement 7].

Respondents' Response to Report of Preliminary Findings:

Respondents submitted the following responses to the reported deficiencies:

1) Respondents will remove and redo all sidewalk and curb ramp sections listed in the Report of Preliminary Findings [henceforth referred to as the "Report"], so that they have a running slope of 5% or less and a cross slope of 2% or less, with the exception of the sidewalk adjacent to the southwest of Building 103 and the sidewalk adjacent to the west of west curb ramp for Building 103. After they conducted an additional inspection of these two sidewalk sections, Respondents stated they measured a 0.36" vertical change along a six-foot section. Respondents argue this change "is relatively minor and almost undetectable."

2) Respondents disagree with ICRC's determination that the flared sides to the curb ramps lacked the required detectable warnings. Respondents contend the existing detectable warnings meet the accessibility requirements as established in ANSI 2009.

- 3) Respondents will install “Van-Accessible” signage at one of the parking spaces currently reserved for persons with disabilities adjacent to each of the subject property buildings.
- 4) Respondents will replace the pedestals for the mailbox kiosks, such that the height of the keyholes for all mailboxes at each subject property building will be 54” or less.
- 5) Respondents will reduce the force required to open the exterior doors at each subject property building by adjusting the hardware so that they do not require more than 8.5 pounds of force to open them.
- 6) Respondents acknowledge the steps are present in the interior hallways of Building 103 and Building 201. However, Respondents disagree with ICRC’s determination these steps have a discernible effect on the travel path of tenants with mobility impairments, when tenants travel between the ground-floor units or the elevators and the garage and the refuse dumpster. Respondents stated:

Each of the buildings has sufficient, accessible garages. In regards to the refuse dumpster located on the east side of the 201 building we ask you to look at the site as a collective whole. In order to make this work we would need to make a dumpster equally “inaccessible” by moving it to a different location near another building or we would need to locate it on the exterior of the building.

On November 21, 2014, Respondents responded in writing to ICRC’s initial offer of settlement, and stated:

Given that the garage/dumpster area is located on the west side of Building 103, where there are no steps, no accessibility issues exist. Respondents also believe there are an adequate number of garage spaces available on the west side of Building 103 to accommodate any resident’s need for accessibility.

In response to Building 201, respondents propose to relocate the dumpster to the west end of Building 201, where the garage spaces are located. A space will be created and ramps will be constructed to allow accessibility. Again respondents believe that the number of garage spaces located on this end of Building 201, where the dumpster is being relocated and where the ramp is constructed, this should be more than adequate to accommodate any residents with accessibility needs.

7) Respondents acknowledge the sliding glass door providing access from the living room onto the porch is too narrow for a tenant utilizing a wheelchair. However, Respondents maintain the other sliding glass door providing access to the porch from the bedroom is only a few feet away, and is wide enough to be usable by tenants utilizing a wheelchair.

On November 21, 2014, Respondents responded in writing to ICRC's initial offer of settlement, and stated:

Respondents will modify the secondary entrance / patio door that is inadequate and make it a window by removing the handle. This modification will create only 1 entrance to the patio, and this entrance will meet all accessibility requirements.

8) Respondents will add shims under the carpet during unit turnover to decrease the interior threshold height at the porch entrance to the units to a height less than the 0.75-inch maximum. Respondents will add a ramp to the porch to decrease the exterior threshold height at the secondary entrances to the units to a height less than the 4-inch maximum below the level of the finished interior floor.

9) Respondents will add three-outlet UL-approved adapters during unit turnover to the upper outlet of all electrical outlets that are non-compliant because they are too low. Respondents will also add a plastic cover to the lower outlet, which is currently at a height lower than the minimum 15-inch allowed. The end result will be a horizontal row of three electrical outlets, all of which will be at a height greater than the 15-inch minimum allowed.

10) Respondents acknowledge there is not enough clear floor space centered on the kitchen sink, but have not yet determined how to best correct it.

On November 21, 2014, Respondents responded in writing to ICRC's initial offer of settlement, and stated:

Respondents have been unable to arrive at [a] practical solution to date. If we are unable to arrive at an acceptable solution, the respondents will no longer give any of the residents access to the elevators located in these building where the deficiencies were found, thus limiting any deficiencies to 1st floor units only.

11) Respondents will reverse the swing of the door in bathrooms during unit turnover for the one-bedroom units to increase the clear floor space outside of the swing of the door to 30 by 48 inches.

12) During unit turnover, Respondents will replace the vanity in the bathrooms for the one-bedroom units with an offset sink-bowl to provide the knee-space clearance required for a forward approach.

13) Respondents did not respond to the reported observed deficiency regarding the height of towel racks.

Assessment of Deficiencies:

Respondents stated all units were built in accordance with the requirements of the 2009 International Building Code [IBC 2009], which is not one of the safe harbors accepted by HUD. See above. Therefore, the FHADM must be used to assess and determine compliance with the ICRA and FHA.

Following is the assessment of the reported deficiencies, based on the scoping requirements of FHADM and the technical requirements of ANSI 1986:

1) ICRC concurs with Respondents' proposal to replace all the sidewalk sections listed in the Report, with the exception of the sidewalk adjacent to the southwest of Building 103 and the sidewalk adjacent to the west of west curb ramp for Building 103. ICRC concedes that a vertical displacement of 0.36" has no discernable effect on the accessibility for these two sidewalk sections.

2) ICRC concedes ANSI does not specifically require detectable warnings on the flared sides of curb ramps. ICRC based its initial assessment about this deficiency on the interpretation of a figure on page

2.22 in the FHADM. However, upon further review, the existing detectable warnings were found to meet the ANSI requirements. ICRC examined the ANSI 1986 instead of ANSI 2009, because the latter is not yet accepted as a safe harbor by HUD.

3) ICRC concurs with Respondents' proposal to install "Van-Accessible" signage to one of the existing parking spaces reserved for persons with disabilities at each subject property building.

4) ICRC concurs with Respondents' proposal to replace the pedestals for the mailbox kiosks, such that the height of the keyholes for all mailboxes for the kiosks at each subject property building will be 54" or less.

5) ICRC concurs with Respondents' proposal to reduce the force required to open the exterior doors at each subject property building by adjusting the hardware such that they do not require more than 8.5 pounds of force to open them.

6) ICRC concedes the route for persons with mobility impairments that includes the interior ground-floor hallway located in Building 103 is not affected by the presence of the step located adjacent to the garages on the east side of the building. During an additional inspection of the subject property on November 24, 2014, ICRC investigators verified there are no units located east of this step, and there is a dumpster located adjacent to the garages at the west side of the building. The route for a person with a mobility impairment traveling to or from the ground-floor units in Building 103 is not significantly impacted by the step at the east end of the interior hallway because the route from the main entrance to all of these units and from these units to the dumpster located at the west end of the building does not include a step.

ICRC concurs with Respondents' proposal to (1) move the dumpster for Building 201 from the east to the west end of the building where the garage parking spaces are located; (2) create a space for the dumpster; and (3) install a ramp so tenants with mobility impairments can access the dumpster.

7) ICRC acknowledges there are two secondary entrances to the porch/balcony for each unit, and that the entrance from the bedroom is wide enough to allow tenants in a wheelchair to access the porch. However, the law requires all such secondary exterior doors, including the door from the living room, to be of sufficient opening width to ensure accessibility. ICRC Investigator asked Amber Fagan, Project Director for Fair Housing Accessibility First, for her opinion as to whether both of these doors

must meet the width requirement to provide accessibility to the porch. Ms. Fagan answered, “Yes.” She then stated:

[Fair Housing Act] Design Manual at p3.3 “Usable doors are doors within the dwelling unit intended for user passage and must be usable in terms of clear opening width. [...] Usable doors include all [emphasis added by Ms. Fagan] secondary exterior doors at dwelling units that open onto private decks, balconies, and patios.”

ICRC disagrees with Respondents’ proposal to convert the 25.5-inch sliding glass door entrance to the porch/balcony from the living room into a window by removing the handle. ICRC consulted with Cheryl Kent, Special Advisor for Disability Policy for HUD, about Respondents’ proposed fix for the non-compliant sliding glass door. Following are excerpts of emails, which include the question posed by ICRC investigator and Ms. Kent’s response:

[Email from ICRC investigator – Date: November 19, 2014]

[W]e found one of two sliding glass-doors that provide access to a porch or balcony was too narrow, while the second door was compliant with the 31 5/8-inch requirement for secondary doors. The builder is proposing to modify the narrow sliding glass-door by permanently shutting it off, and turning it into a “window”, so he can avoid the expense of replacing it. Can the builder legally “eliminate” the non-compliant door, so he does not have to replace it?

[Email from Ms. Kent – Date: December 11, 2014]

Our legal staff did indicate that on the second question, the decision would be up to the your office, but noted they would be hesitant to compromise on the door issue since each set of sliding doors is in a different room [bold added for emphasis].

Additionally, in the second inspection of the property on November 24, 2014, ICRC investigators measured the clear opening width for the bedroom sliding glass door for Unit 108 in Building 107 at 30.25 inches and the clear opening width of the living room sliding glass door at 25 inches.

Subsequently, Respondents submitted two counterproposals. First, Respondents proposed to only replace the sliding glass door at the non-compliant secondary entrance from the living room to the porch with a compliant swing door that has a clear opening width of at least 31.63 inches for the ground-floor units at all three buildings, which totals 41 units. Second, Respondents proposed to convert the sliding glass door entrance to the porch/balcony from the living room into a window by removing the handle for the second and third-floor units in Buildings 103 and 201.

Based on the additional information gathered and Respondents' counterproposal, ICRC accepts only Respondents' first counterproposal and not the second counterproposal, as noted above, as long as Respondents also:

(a) Verify the secondary entrance from the bedroom to the balcony is usable and has a clear opening width of at least 31.63 inches for all ground-floor, second-floor, and third-floor units in Buildings 103 and 201, and all ground floor units in Building 107;

(b) Replace any non-compliant entrances from the bedroom to the balcony that measure less than 31.63 inches for the clear opening width, including Unit 108 in Building 107, which ICRC Investigators measured at 30.25 inches; and

(c) Understand ICRC's acceptance of this counterproposal does not prevent possible future enforcement actions by either the United States Department of Housing and Urban Development (HUD) or the United States Department of Justice (DOJ), as these federal agencies may require the secondary entrance from the living room onto the balcony for the second and third-story units in Buildings 103 and 201 must also be replaced with a door that has a clear opening width of at least 31.63 inches.

8) ICRC concurs with Respondents' proposal to add shims under the carpet to decrease the interior threshold height at the porch entrance to the units to a height less than the 0.75-inch maximum; and to add a ramp to the porch to decrease the exterior threshold height at the secondary entrances to the units to a height less than the 4-inch maximum below the level of the finished interior floor. ICRC concurs with Respondents' proposal to make the modification to each unit with this deficiency during unit turnover.

9) ICRC concurs with Respondents' proposal to add three-outlet UL-approved adapters to the upper outlet, which are at a height greater than 15 inches, for all electrical outlets with a lower outlet

that is less than 15 inches above the floor; and to install plastic outlet covers to the lower outlet for each of these electrical outlets. The end result will be a horizontal row of three electrical outlets, which will be at a height greater than the 15-inch minimum allowed.

10) ICRC disagrees with Respondents' proposal to remove the elevator, so as to limit the number of covered units to only those at the ground level. ICRC consulted with Ms. Kent about Respondents' proposed fix for the lack of sufficient clear floor space centered in front of the kitchen sinks in the one-bedroom units. Following are excerpts of emails, which include the question posed by ICRC investigator and Ms. Kent's response:

[Email from ICRC investigator – Date: November 19, 2014]

[W]e found kitchen sinks at a covered property that did not have enough clear floor space. The property has elevators at the three-story buildings, and there are units [on] all three floors with kitchen sinks that would need to be retrofitted to correct the violation. The builder is proposing to remove the elevator from a building, so he only needs to do retrofits to the kitchen sinks in the ground-floor units, instead of in all the non-compliant units served by the elevator. Can the builder legally remove the elevators?

[Email from Ms. Kent – Date: December 11, 2014]

First, we agree with the points offered in response by Amber Fagan with our Fair Housing Accessibility FIRST technical guidance center (her email of Nov. 14, below). Second, HUD would never approve the removal of elevators [bold added for emphasis]. We believe the HUD/DOJ Joint Statement on Accessibility (Design and Construction) Requirements for Covered Multifamily Dwellings Under the Fair Housing Act, Q&A 21, addresses both of the situations you raised:

21. May owners of covered multifamily buildings designed and constructed in compliance with the Fair Housing Act make subsequent changes to the building so that it no longer meets the Act's requirements?

Original and subsequent owners of covered multifamily buildings that were designed and constructed in compliance with the Fair Housing Act's design and construction requirements must maintain the

building's accessible features so that the building continues to meet the Act's requirements. (emphasis added)

As referenced above, ICRC Investigator asked Ms. Fagan the same question via email on November 14, 2014, to which she responded:

No. At first occupancy the elevator created 100% covered dwelling units. Removing the elevators rescinds the accessible route to any covered unit that is not on the ground floor. Properties that are subject to the Act's requirements cannot later be altered to be noncompliant.

An online search uncovered a quote from John Meade, Enforcement Branch Chief, U.S. Department of Housing & Urban Development, Chicago FHEO Center, who stated in an email:

It is not permissible to take elevators out of service in federally subsidized housing, in multi-family buildings first occupied after March 13, 1991, or in non-subsidized buildings built and occupied before then which have disabled residents.

ICRC investigators took additional measurements of the clear floor space centered in front of the kitchen sink for one-bedroom Unit 108 in Building 107 during their second visit to the subject property on November 24, 2014. A burlap cloth measuring 30 by 48 inches was laid down, with the 30-inch side parallel to the straight counter edge adjacent to the kitchen sink, and such that the cloth would be as close as possible while still all of the cloth was visible from above. This was done with the goal to mimic the configuration for a tenant in a wheelchair to make a forward approach to the kitchen sink, which would be possible if the cabinets underneath were made removable. Using this configuration and placement for the burlap cloth, the distance from the front-center edge of the 30-inch side of the burlap cloth nearest to the kitchen sink to the faucet handle was measured at 22 inches. This distance is less than the maximum distance of 24 inches allowable by ANSI 1986, and would allow a tenant in a wheelchair to make a forward approach to the kitchen sink if the necessary knee space was available, as they would be with removable cabinetry.

Subsequently, Respondents proposed, as a counterproposal, to either (1) replace the cabinets directly under the kitchen sink at its current location and the cabinets adjacent to the left and right of the cabinet under the sink ; or (2) move the sink to an adjacent location in the kitchen – which will provide the 30 by 48-inch clear floor space centered on the kitchen sink that is required for a parallel approach

by a tenant in a wheelchair, and without removable cabinets – only for all ground-floor one-bedroom units at the subject property, which totals 22 units, to create the required knee-space for a forward approach.

Based on the additional information gathered and Respondents' counterproposal, ICRC accepts Respondents' counterproposal, as noted above, as long as Respondents also:

(a) Install a permanent placard at a prominent location on the cabinet located under the kitchen sink at the 16 one-bedroom units on the second and third floors of Building 103, which will direct tenants – who use a wheelchair due to a mobility impairment and require knee-space clearance to be able to use the kitchen sink – to contact management to request the creation of the required knee space by (1) removing the cabinets under the kitchen sink and the ones adjacent to the left and right of such cabinet; and (2) finishing the floors, cabinet, and walls located within and adjacent the created knee space; and

(b) Understand ICRC's acceptance of this counterproposal does not prevent possible future enforcement actions by either the United States Department of Housing and Urban Development (HUD) or the United States Department of Justice (DOJ), as these federal agencies may require the same retrofit be completed at the remaining 16 one-bedroom units located at the second and third floors of Building 103.

Based on the additional information gathered, ICRC proposes Respondents make the cabinets underneath the kitchen sinks for the 22 one-bedroom units removable or remove the cabinets, and finish the floor, wall, and cabinet surfaces to correct this deficiency.

11) ICRC concurs with Respondents' proposal to reverse the door swing in the bathroom for the one-bedroom units to increase the clear floor space outside the swing of the door to 30 by 48 inches.

12) ICRC concurs with Respondents' proposal to replace the vanity in the bathrooms with an offset sink-bowl to provide the knee-space clearance required for a forward approach, in all covered one-bedroom units at the subject property.

13) ICRC proposes Respondents move the towel bars in the bathrooms to a maximum height of 46 inches at locations above the toilet and 48 inches at the other locations without obstructions.

On November 21, 2014, Respondents responded in writing to ICRC's initial offer of settlement, and stated:

Since there is no clear code on this issue respondents propose to move any towel bar in the bathroom to the suggest height that is not above the toilet. Those towel bars located above the toilet will remain in place in order to maintain functional use.

Predetermination Settlement Agreement

A complaint having been filed by Complainant against Respondents with ICRC under Iowa Code Chapter 216 and there having been a preliminary inquiry, including an on-site inspection of the subject property, the parties do hereby agree and settle the above-captioned matter in the following extent and manner:

Acknowledgment of Fair Housing Laws

1. Respondents agree there shall be no discrimination, harassment, or retaliation of any kind against any person for filing a charge under the ICRA; or because of giving testimony or assistance, or participating in any manner in any investigation, proceeding or hearing under the ICRA; or because of lawful opposition to any practice forbidden under the ICRA.
2. Respondents agree to refrain from committing any act of discrimination in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities on the basis of race, color, creed, sex, sexual orientation, gender identity, national origin, religion, disability, or familial status, in violation of the ICRA.
3. Respondents acknowledge the FHA and ICRA make it unlawful to discriminate in the sale or rental of a dwelling, or otherwise make unavailable or deny a dwelling, to a buyer or renter on the basis of disability. 42 U.S.C. 3604(f)(1); Iowa Code § 216.8A(3)(a).

4. Respondents acknowledge the FHA and ICRA make it unlawful to discriminate in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling on the basis of disability. 42 U.S.C. 3604(f)(2)(a) and Iowa Code § 216.8A(3)(b)(1)

5. Respondents acknowledge the FHA and ICRA make it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford person with a disability an equal opportunity to use and enjoy a dwelling. 42 U.S.C. 3604(f)(3)(b); Iowa Code § 216.8A(3)(c)(2).

6. Respondents acknowledge as owners, developers, builders, or managers of covered multifamily dwellings – ground-floor units in a building consisting of four or more dwelling units built for first occupancy after January 1, 1992 – must build those dwellings in compliance with specific design and construction accessibility requirements, in accordance with the FHA and ICRA. Iowa Code §216.8A(3)(c)(3); 42 U.S.C. §3604(f)(3)(C).

HUD has described these accessibility requirements via regulation and in several publications, including the “Final Fair Housing Accessibility Guidelines.” 24 C.F.R. Part 100.200 et seq.; 56 Fed. Reg. 9,472. In the “Guidelines,” HUD presented the seven specific requirements as:

1. Accessible building entrance on an accessible route.
2. Accessible and usable public and common areas.
3. Usable doors.
4. Accessible route into and through the covered dwelling unit.
5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
6. Reinforced walls for grab bars.
7. Usable kitchens and bathrooms.

Voluntary and Full Settlement

7. The parties acknowledge this Predetermination Settlement Agreement (hereinafter referred to as the Agreement) is a voluntary and full settlement of the disputed complaint. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.

8. The parties enter into this Agreement in a good faith effort to amicably resolve existing disputes. The execution of this Agreement is not an admission of any wrongdoing or violation of law. Nor is the execution of this Agreement an admission by Complainant that any claims asserted in her complaint are not fully meritorious.

9. The parties agree the execution of this Agreement may be accomplished by separate counterpart executions of the Agreement. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document.

10. Respondents agree ICRC may review compliance with this Agreement. And as part of such review, Respondents agree ICRC may examine witnesses, collect documents, or require written reports.

Release

11. Complainant hereby waives, releases, and covenants not to sue Respondents with respect to any matters which were, or might have been alleged as charges filed with ICRC, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Respondents of the promises and representations contained herein. Complainant agrees any complaint filed with any other anti-discrimination agency, including the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, which involves the issues in this complaint, shall be closed as Satisfactorily Adjusted.

Disclosure

12. Because, pursuant to Iowa Code §216.15A(2)(d), ICRC has not determined that disclosure is not necessary to further the purposes of the ICRA relating to unfair or discriminatory practices in housing or real estate, this Agreement is a public record and subject to public disclosure in accordance with Iowa's Public Records Law, Iowa Code Chapter 22. See Iowa Code §22.13.

Required Modifications or Retrofits

13. Respondents agree to make the following modifications or retrofits to the subject property:

Accessible and Usable Public and Common Use Areas – Sidewalk Sections Adjacent to Building 103 and Building 201

(a) The parties agree the cross slope of the sidewalk sections adjacent to Building 103 and 201, as highlighted in Figure 1A of Appendix A, exceeds the 2% maximum cross-slope and 5% maximum running-slope established in ANSI A117.1 1986.

(b) Respondents agree they will remove and replace the existing sidewalk sections described above to a measurement at or below a running slope of 5% and at or below a cross slope of 2%, in compliance with the FHA and ICRA, and as required by ANSI A117.1 1986.

Respondents agree they will inspect the sidewalk sections adjacent to Building 107. If the running slope or cross-slope values exceed the maximum slopes allowed, and the vertical displacement exceeds 0.36", Respondents agree they will perform the same modification as at the sidewalk sections for Building 103 and Building 201.

Accessible and Usable Public and Common Use Areas – "Van Accessible" Signage

(a) The parties agree none of the parking spaces reserved for persons with disabilities have signage indicating the parking spaces are "Van Accessible," as required in Section 4.6.4 of the ADAAG.

(b) Respondents agree to install additional signage to the existing signage at one of the parking spaces reserved for persons with disabilities adjacent to each of the subject property buildings, which indicates the space is designated as "Van Accessible," as required in the ADAAG. The current signage for all parking spaces reserved for persons with disabilities will be kept, which includes the International Symbol of Accessibility as described in the ADAAG.

Accessible and Usable Public and Common Use Areas – Mailboxes

- (a) The parties agree the mailboxes for all tenants in Building 103 and Building 201, and those for ground-floor tenants in Building 107, exceed the maximum reach range of 54 inches for a person who requires the use of a wheelchair to make a parallel approach, as specified in ANSI A117.1 1986.
- (b) Respondents agree they will replace the pedestals for each mailbox kiosk for Building 103, Building 107, and Building 201 to provide all tenants with mailboxes that do not exceed the height of 54 inches, as required by ANSI A117.1 1986.

Accessible and Usable Public and Common Use Areas – Building Entrance Doors

- (a) The parties agree the force required to open the entrance doors to each of the subject property buildings exceeds the maximum force of 8.5 pounds established in ANSI A117.1 1986.
- (b) Respondents agree they will adjust the self-closing hardware for the entrance doors to each of the buildings in the subject property to meet the requirements of the FHA and ICRA (ANSI A117.1 1986), so these doors require no more than 8.5 pounds of opening force.

Accessible and Usable Public and Common Use Areas – Interior Hallway Steps

- (a) The parties agree the ground-floor interior hallways include seven-inch vertical rises – one adjacent to the garages on the east side of Building 103 and two more adjacent each to the garages on the west and on the east side of Building 201, where the building dumpster is also located.

The parties agree the vertical rise at the ground-level interior hallway located in Building 103 does not impact the accessibility for the route from any of the ground-floor units at this building to any of the common areas, including the parking spaces designated as reserved for persons with disabilities and the dumpster.

(b) Respondents agree they will install an accessible ramp measuring at least 32 inches wide at the west vertical rise in Building 201 to meet the requirements of the FHA and ICRA (ANSI A117.1 1986), so long as:

1. The ramp does not have cross-slope values greater than 2% or running-slope values greater than 8.33%.
2. The dumpster is moved from its current location on the east side of Building 201 to the west side of the same building.
3. An enclosure is built for the dumpster at its new location on the west side of Building 201, which is similar in nature of construction to the current one at the east side of the building.
4. The existing enclosure for the dumpster at the east side of Building 201 is converted in to parking garage spaces, so as to maintain the same total number of garage parking spaces as currently exist.

Usable Doors – Clear Opening Width for Secondary Entrance

(a) The parties agree each unit has two secondary entrances to the porch. The parties agree in Unit 110 at Building 103, the entrance from the bedroom is usable with a clear opening width of 31.63 inches, and the entrance from the living room is unusable with a clear opening width of 25.5 inches; and in Unit 108 at Building 107, both entrances are unusable, with a 30.25-inch clear opening width for the bedroom entrance and a 25-inch clear opening width for the living room entrance. The parties agree a secondary entrance must measure 31.63 inches minimum in order to be compliant with usability requirements, as established ANSI A117.1 1986.

(b) Respondents agree to take measurements of the clear opening width for all sliding glass doors in all covered units, with the existing plastic bumper installed in the track for each sliding glass door to retain its protective function.

Respondents agree they will modify or replace:

(i) any non-compliant sliding glass door measuring less than the minimum required width, as established in paragraph “(a)” of the current subsection; and increase the clear opening width to 31.63 inches or more for all ground-floor units in Buildings 103, 107, and 201; and

(ii) any non-compliant sliding glass door at the secondary entrance from the bedroom to the balcony for all second and third-floor units in Buildings 103 and 201.

Respondents agree all the required modifications noted above will be done in compliance with the requirements of the FHA and ICRA (ANSI A117.1 1986).

Usable Doors – Threshold for Secondary Door

(a) The parties agree (1) the exterior threshold height onto the wood balcony for Unit 301 in Building 103 exceeds 0.5 inches below the interior finished floor surface, and the interior threshold height onto the carpeted surface exceeds 0.75 inches; and (2) the interior threshold height onto the finished linoleum floor for Unit 110 in Building 103 exceeds 0.75 inches, which are the maximum heights allowed for interior and exterior thresholds onto pervious exterior surfaces by FHADM.

(b) Respondents agree they will reduce the interior and exterior threshold heights at the porch entrance for all ground-floor units in Building 107, and all units in Building 103 and 201 that exceed the above-outlined requirements, as required by FHADM.

Light Switches, Electrical Outlets, Thermostats, and Other Environmental Controls in

Accessible Locations – Electrical Outlets

(a) The parties agree the height for the bottom outlet in all electrical outlets, except for those in the kitchen, bathroom, and laundry rooms, are less than the minimum height of 15 inches in all units, as required by FHADM.

(b) Respondents agree they will install three-outlet UL-approved adapters to the noncompliant electrical outlets in ground-floor units in Building 107, and in all units in Building 103 and in Building 201, such that the three electrical outlets will be arranged horizontally to a height of no less than 15 inches, as required by FHADM.

Usable Kitchens – Clear Floor Space Centered in Front of Sink

(a) The parties agree the clear floor space centered in front of the kitchen sink for Unit 110 in Building 103 is less than the 30 by 48-inch minimum dimensions, for a parallel approach as required in Section 7.3 of the FHADM.

(b) Respondents agree they will retrofit the kitchen sinks in all covered one-bedroom units at the subject property to create the minimum clear floor space dimensions of 30 by 48 inches, as required by the FHADM, either by:

1. Replacing existing non-removable cabinets under the kitchen sink with removable cabinets; by
2. Removing the cabinets underneath the kitchen sink; or by
3. Moving the sink to an adjacent location in the kitchen.

Respondents agree either one of the first two methods of retrofitting the kitchen cabinets will result in finished surfaces for the areas adjacent to the knee space, including the floor, cabinet, and wall, and have the same knee space as that required by the FHADM for bathroom sinks, which is indicated in following figure:

[KNEE SPACE FIGURE IN HARD COPY OF AGREEMENT]

Respondents agree the last method of retrofitting the kitchen, described in option “3” above, will result in a 30 by 48-inch clear floor space centered on the kitchen sink that is required for a parallel approach by persons using a wheelchair, and will include kitchen cabinets which may or may not be removable.

Usable bathrooms – Clear floor space outside of swing of door

(a) The parties agree clear floor space outside the swing of the door in the second bathroom for Units 110 and 208 in Building 103, and Unit 102 and 113 in Building 107, both of which are one-bedroom units, is less than the 30 by 48-inch minimum dimensions, as required in Section 7.39 of the FHADM.

(b) Respondents agree they will reinstall the doors for bathroom in the ground-floor one-bedroom units in Building 107, and all one-bedroom units in Building 103, to reverse the swing of the door, such that it will swing away from the bathroom, and create the minimum clear floor space dimensions of 30 by 48 inches, as required by the FHADM.

Usable bathrooms – Bathroom Sinks

(a) The parties agree the distance from the midline of the sink to the adjacent wall in the bathroom for Units 110 and 208 in Building 103, and Units 102 and 113 in Building 107 was measured at under the 24-inch minimum required by ANSI A117.1 1986, for bathroom sinks without removable cabinets.

(b) Respondents agree they will remove and replace the bathroom vanity with an offset sink-bowl to provide enough clear floor space required to allow for a parallel approach by a person who requires the use of a wheelchair, with the midline of the offset sink-bowl centered on the 48-inch side of the 30 by 48-inch clear floor space in all covered one-bedroom units at the subject property, and as shown in the figure below:

Usable bathrooms – Bathroom Towel Bars

(a) The parties agree the height of the towel bars in all bathrooms in the ground-floor units at the subject property exceed the reachable height of 46 inches for those located above the toilet and 48 inches for towel bars without an obstruction, as based on the general reach requirements established in ANSI A117.1 1986. The parties agree neither FHA, ICRA, nor ANSI A117.1 1986 contains specific requirements for the height of towel bars.

The parties agree setting the towel bars that are located above the toilets to a height of 46 inches will result in eliminating their functional use.

(b) Respondents agree they will adjust the height of the bathroom towel racks that are not located above toilets in all covered dwelling units at the subject property to a height of 48 inches, as based on the general reach requirements established in ANSI A117.1 1986.

Respondents agree they will maintain the current height for the towel bars above the toilets to maintain their functional use.

Required Timelines for Completion of Modifications or Retrofits

14. Respondents agree they will allow tenants to remain in their units while the renovations are being completed, so long as their continued stay is safe and does not unduly disrupt the renovation work. If their continued stay is not safe or unduly interferes with renovation work, Respondents agree to move the affected tenants to another suitable unit on a temporary basis, until the unit is made safe or the renovation work is completed. Respondents agree to pay all costs generated by such moves.

15. Respondents agree that the above-required modifications or retrofits to the public and common use areas of the subject property – sidewalk section adjacent to Building 103 and Building 201 and “Van-Accessible signage, mailboxes, and building entrance doors – within 150 days from the date of the Closing Letter from ICRC.

16. Respondents agree to make the above-required modifications or retrofits to each of the units in Building 103 and 201 and the ground-floor units in Building 107, as each of the units becomes vacant. Respondents agree to make the required modifications or retrofits before each of the units is rented again.

Mandatory Reporting Requirements

17. Respondents agree to notify ICRC when they have completed the required modifications or retrofits for each and every subject unit and the public and common use areas. Such notification shall be made within 90 days of completion. These required notifications to ICRC will continue until all required modifications or retrofits have been completed in all 95 units, listed in attached Appendix B.

18. Respondents agree, as the required modifications or retrofits are made to a particular unit or common area, ICRC may then inspect such unit or common area, and then report the results of its inspection, addressing any outstanding deficiencies, in writing and within 30 days of the inspection, to Respondents.

If the inspection indicates outstanding deficiencies, Respondents shall correct all such deficiencies within a reasonable period of time as determined by ICRC, and shall pay a reasonable fee for another inspection by ICRC staff or pay for an inspection by a third party inspector, approved by ICRC.

19. The sale or transfer of ownership, in whole or in part, by any owner of the subject property will not affect any obligation to modify or retrofit the subject property as specified in this Agreement, unless Respondents have obtained, in writing, as a condition of sale or transfer, the purchaser or transferee's commitment to be bound by the terms of this agreement to complete all required modifications or retrofits as specified in this Agreement.

20. Within 90 days from the date of the Closing Letter from ICRC, Respondents agree to provide a written statement to ICRC, to the attention of Don Grove, Supervisor of Housing Investigations, which specifies how each of the above-required modifications or retrofits will be corrected.

[Please go to next page for the signature page]

Woodland Reserve North, LC

Date

RESPONDENT

Woodland Reserve North, PW, LC

Date

RESPONDENT

Woodland Reserve North, ZL, LC

Date

RESPONDENT

Woodland Reserve North, TL, LC

Date

RESPONDENT

Woodland Reserve North, JO, LC

Date

RESPONDENT

Insite Construction, LC

Date

RESPONDENT

JCorp, Inc.

Date

RESPONDENT

Duane E. Jensen

Date

RESPONDENT

Angela Williams

Date

COMPLAINANT

Don Grove, Acting Executive Director

Date

IOWA CIVIL RIGHTS COMMISSION